

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 202002825	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 04/20/2020 10:48 PM, Monday, 04/20/2020 10:49 PM	Location of Incident: Howard Avenue and Sterling Place; 1714 Park Place	Precinct: 73	18 Mo. SOL 10/20/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 04/21/2020 4:21 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 04/21/2020 4:21 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POF Nicki Canady	02568	960316	PBBN SU
3. SGT Gabriel Cuevas	02226	945633	PBBN SU
4. POM Brian Doyle	2068	954752	079 DET
5. DTS Reginald Smith	4482	951278	C/SCENE
6. PO Joseph Ardolino	19087	958262	PBBN SU PST

Officer(s)	Allegation	Investigator Recommendation
A.POF Nicki Canady	Abuse: At Howard Avenue and Sterling Place in Brooklyn, Police Officer Nicki Canady stopped an individual.	
B.POF Nicki Canady	Abuse: At Howard Avenue and Sterling Place in Brooklyn, Police Officer Nicki Canady frisked an individual.	
C.POF Nicki Canady	Abuse: At Howard Avenue and Sterling Place in Brooklyn, Police Officer Nicki Canady stopped § 87(2)(b)	
D.SGT Gabriel Cuevas	Abuse: At Howard Avenue and Sterling Place in Brooklyn, Sergeant Gabriel Cuevas stopped § 87(2)(b)	
E.DTS Reginald Smith	Abuse: At Howard Avenue and Sterling Place in Brooklyn, Detective Reginald Smith stopped § 87(2)(b)	
F.POF Nicki Canady	Abuse: At Howard Avenue and Sterling Place in Brooklyn, Police Officer Nicki Canady failed to provide an individual with a business card.	
G.DTS Reginald Smith	Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith struck § 87(2)(b) with a vehicle.	
H.DTS Reginald Smith	Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith pointed his gun at § 87(2)(b)	
I.DTS Reginald Smith	Abuse: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith threatened § 87(2)(b) with the use of force.	
J.DTS Reginald Smith	Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith used physical force against § 87(2)(b)	
K.DTS Reginald Smith	Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
L.DTS Reginald Smith	Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith restricted § 87(2)(b) s breathing.	
M.DTS Reginald Smith	Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith used physical force against § 87(2)(b)	
N.POF Nicki Canady	Force: Outside 1714 Park Place in Brooklyn, Police Officer Nicki Canady used physical force against § 87(2)(b)	
O.POF Nicki Canady	Force: Outside 1714 Park Place in Brooklyn, Police Officer Nicki Canady restricted § 87(2)(b) breathing.	
P. Officers	Force: Outside 1714 Park Place in Brooklyn, officers restricted § 87(2)(b) breathing.	
Q.POF Nicki Canady	Abuse: Outside 1714 Park Place in Brooklyn, Police Officer Nicki Canady frisked § 87(2)(b)	
R.PO Joseph Ardolino	Abuse: Outside 1714 Park Place in Brooklyn, Police Officer Joseph Ardolino frisked § 87(2)(b)	
S.PO Joseph Ardolino	Abuse: Outside 1714 Park Place in Brooklyn, Police Officer Joseph Ardolino searched § 87(2)(b)	
T.POF Nicki Canady	Abuse: Outside 1714 Park Place in Brooklyn, Police Officer Nicki Canady searched § 87(2)(b)	
U.SGT Gabriel Cuevas	Abuse: Outside 1714 Park Place in Brooklyn, Sergeant Gabriel Cuevas frisked § 87(2)(b)	
V.POF Nicki Canady	Abuse: Outside 1714 Park Place in Brooklyn, Police Officer Nicki Canady did not obtain medical treatment for § 87(2)(b)	
W.SGT Gabriel Cuevas	Abuse: Outside 1714 Park Place in Brooklyn, Sergeant Gabriel Cuevas did not obtain medical treatment for § 87(2)(b)	
X.DTS Reginald Smith	Abuse: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith did not obtain medical treatment for § 87(2)(b)	
Y.POM Brian Doyle	Abuse: Outside 1714 Park Place in Brooklyn, Police Officer Brian Doyle did not obtain medical treatment for § 87(2)(b)	
Z.SGT Gabriel Cuevas	Abuse: Outside 1714 Park Place in Brooklyn, Sergeant Gabriel Cuevas failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
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§ 87(2)(g), § 87(4-b)		
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§ 87(2)(g), § 87(4-b)		

Case Summary

This complaint was filed on April 21, 2020, via the CCRB website by an unidentified reporting non-witness who said she was the mother of one of the alleged victims, § 87(2)(b). The second victim remains unidentified.

On April 20, 2020, at about 10:48 p.m., § 87(2)(b) was walking in the vicinity of Howard Avenue and Sterling Place in Brooklyn, when PO Nicki Canady of Patrol Borough Brooklyn North Anti-Crime stopped (Allegation A: Abuse of Authority, § 87(2)(g)) and frisked an unidentified individual (Allegation B: Abuse of Authority, § 87(2)(g)). § 87(2)(b) fled from the encounter and was pursued and stopped by PO Canady, Det. Reginald Smith, and Sgt. Gabriel Cuevas, all of Patrol Borough Brooklyn North Anti-Crime (Allegations C-E: Abuse of Authority, § 87(2)(g)). PO Canady failed to provide the unidentified individual with a business card (Allegation F: Abuse of Authority, § 87(2)(g)). In front of 1714 Park Place in Brooklyn, Det. Smith, the driver of a police vehicle which pursued § 87(2)(b) allegedly struck § 87(2)(b) with the police vehicle (Allegation G: Force: § 87(2)(g)). Det. Smith allegedly pointed his gun at § 87(2)(b) and threatened to shoot him (Allegation H: Force, § 87(2)(g)). Allegation I: Abuse of Authority, § 87(2)(g)). Det. Smith allegedly performed a forcible take down of § 87(2)(b) (Allegation J: Force: § 87(2)(g)). Det. Smith allegedly placed his knees upon § 87(2)(b) back which restricted his breathing (Allegations K-L: Force, § 87(2)(g)). Det. Smith allegedly pushed § 87(2)(b) head into the sidewalk (Allegation M: Force, § 87(2)(g)). PO Canady placed her knees atop § 87(2)(b) back (Allegation N: Force, § 87(2)(g)) and allegedly restricted § 87(2)(b) breathing (Allegation O: Force: § 87(2)(g)). Officers allegedly restricted § 87(2)(b) breathing (Allegation P: Force: § 87(2)(g)). PO Canady frisked § 87(2)(b) (Allegation Q: Abuse of Authority, § 87(2)(g)). PO Joseph Ardolino, of Patrol Borough Brooklyn North Anti-Crime, frisked § 87(2)(b) (Allegation R: Abuse of Authority, § 87(2)(g)). PO Ardolino and PO Canady searched § 87(2)(b) (Allegations S-T: Abuse of Authority, § 87(2)(g)). Sgt. Cuevas instructed PO Ardolino to frisk § 87(2)(b) (Allegation U: Abuse of Authority, § 87(2)(g)). PO Canady, Sgt. Cuevas, Det. Smith, and PO Brian Doyle, also of Patrol Borough Brooklyn North Anti-Crime, did not obtain medical treatment for § 87(2)(b) (Allegations V-Y, Abuse of Authority, § 87(2)(g)). Sgt. Cuevas allegedly failed to provide a business card to § 87(2)(b) (Allegation Z: Abuse of Authority; § 87(2)(g), § 87(4-b)).

§ 87(2)(b) No arrest or summons resulted from this incident.

BWC video was obtained from NYPD Legal. These videos are attached to IA #72-76 (Board Review 01-05) and summarized in IA #94 (Board Review 06). Cell phone video was obtained from § 87(2)(b) § 87(2)(b). These videos are attached to IA #46-48 (Board Review 07-09) and summarized in IA #193 (Board Review 10). There is no other video evidence in this case.

Findings and Recommendations

Allegation (A) Abuse of Authority: At Howard Avenue and Sterling Place in Brooklyn, Police Officer Nicki Canady stopped an individual.

Allegation (B) Abuse of Authority: At Howard Avenue and Sterling Place in Brooklyn, Police Officer Nicki Canady frisked an individual.

Allegation (C) Abuse of Authority: At Howard Avenue and Sterling Place in Brooklyn, Police Officer Nicki Canady stopped § 87(2)(b)

Allegation (D) Abuse of Authority: At Howard Avenue and Sterling Place in Brooklyn, Sergeant Gabriel Cuevas stopped § 87(2)(b)

Allegation (E) Abuse of Authority: At Howard Avenue and Sterling Place in Brooklyn, Detective Reginald Smith stopped § 87(2)(b)

§ 87(2)(b) testified that he left his cousin's house with a friend of his cousin, known only to him as '§ 87(2)(b) (Board Review 11-12, 37). § 87(2)(b) was wearing a waist-length jean jacket and had gloves, a wallet, and tissues in his rear right pants pocket, marijuana in small plastic bags in his left and right jacket pockets, and a cell phone in his right front pants pocket. On their way to a store, § 87(2)(b) and '§ 87(2)(b) briefly spoke with other unidentified individuals near a street memorial which was setup for a deceased friend. An unmarked vehicle stopped in the street near § 87(2)(b). Three individuals with guns on their waistbands exited the vehicle. § 87(2)(b) ran away, not knowing that these people were officers. § 87(2)(b) did not know what if anything happened to any of the other people in the group because he ran away. The unmarked vehicle pursued § 87(2)(b) and an officer, identified via investigation as Det. Smith, performed a forcible takedown (addressed below in Allegation J). An officer asked § 87(2)(b) about the whereabouts of a gun, and § 87(2)(b) told the officer he did not know anything about a gun. During his CCRB interview, § 87(2)(b) denied that he possessed any weapons and denied that he threw any objects as he ran away. § 87(2)(b) said he did not know the names of any of the people who he interacted with, and he refused to provide contact information for § 87(2)(b).

At the start of PO Canady's BWC video, she walks past an unidentified man with a lit cigarette in his mouth. The start of the video has no audio. A second man, identified via investigation as § 87(2)(b) is walking on the sidewalk away from PO Canady on the left side of the frame (nearest to the wall of a building). § 87(2)(b) right hand is beside his waist. PO Canady approaches the § 87(2)(b) on the sidewalk and frisks him down his sides from under his arms down to his legs and around his waistband (Board Review 01). § 87(2)(b) is visible further up the street and begins to walk away toward the intersection as PO Canady approaches § 87(2)(b). At the 00:15 minute mark of the media player timestamp (visible at the bottom of the screen), PO Canady starts running up the intersection in pursuit. At 00:59, PO Canady approaches § 87(2)(b) who is face-down on the sidewalk next to Det. Smith. At 02:07, a rectangular cell phone is visible on the sidewalk next to § 87(2)(b).

At the start of Sgt. Cuevas' BWC video, § 87(2)(b) is walking in front of the police vehicle (Board Review 02). The car stops and Sgt. Cuevas exits the vehicle and begins pursuing § 87(2)(b) on foot.

Det. Smith's BWC video does not capture the start of the encounter at Howard Avenue and Sterling Place (Board Review 05). It begins with him approaching § 87(2)(b) at the end of the pursuit. § 87(2)(b) is holding a cell phone in front of him by his waist.

A Stop Report prepared by PO Canady and approved by Sgt. Cuevas (Board Review 13) states that the officers were patrolling a drug and gang prone location when a man, identified via investigation as § 87(2)(b) was observed walking with an L-shaped bulge in his right pants pocket (front or back is not specified) which was believed to be a firearm. Upon sight of the officers, the man bladed his body away from officers, ran, and was apprehended shortly thereafter. The bulge in the man's pocket was discovered to be a cell phone. The Stop Report does not mention any other individuals § 87(2)(g), § 87(4-b).

§ 87(2)(b) The 73rd Precinct Stop Report Log did not reveal any other Stop Reports related to this incident (Board Review 15).

PO Canady testified that she was on patrol and was seated in the rear driver's side seat of the police vehicle (**Board Review 14**). To her left she observed two men, § 87(2)(b) and § 87(2)(b) walking on the sidewalk. The two men appeared nervous in that they looked back toward the police vehicle. § 87(2)(b) placed his right hand in his waistband, which made PO Canady suspect he was armed, because firearms are often held in a person's waistband. Separately, she observed that § 87(2)(b) had an L-shaped bulge in his right front pant pocket which she believed was a firearm based on the shape. Sgt. Cuevas and Det. Smith also made comments in the vehicle about seeing § 87(2)(b) adjusting his waistband and § 87(2)(b) having an L-shaped bulge. Aside from walking and looking back, the two men were not doing anything else. There were other individuals nearby who were smoking but they did not appear to be with § 87(2)(b) and § 87(2)(b). PO Canady exited the police vehicle by herself and approached the two men. She said, "It's police," to which § 87(2)(b) said, "I don't have anything, you can search me." § 87(2)(b) continued walking up the street. PO Canady frisked § 87(2)(b) down the side of his body, waistband, and near his groin and did not detect a weapon. PO Canady's attention strayed from § 87(2)(b) because she was focused on § 87(2)(b). She heard the screech of tires and saw that § 87(2)(b) was running away and the police vehicle was in pursuit. PO Canady followed on foot. PO Canady did not have sight of § 87(2)(b) during the entire pursuit but during the time she saw him, she did not see him throw anything. Det. Smith gained physical control of him on Park Place and PO Canady caught up to them. A canvass was conducted of the route of § 87(2)(b) flight which did not produce a firearm. PO Canady did not know how it was determined the bulge on § 87(2)(b) was from a cell phone (as reflected on the Stop Report). She believed Sgt. Cuevas informed her that a phone was found on him.

Det. Smith testified that while driving on patrol, he observed a group of three to four individuals walking on the sidewalk next to them (**Board Review 17**). The individuals were not doing anything except walking and Det. Smith did not recall if he detected an odor of marijuana. PO Canady said she saw that § 87(2)(b) had an L-shaped bulge in his pocket. Det. Smith looked and saw that there was an L-shaped bulge in § 87(2)(b) front right pants pocket. Det. Smith did not observe anything that made him think any of the other individuals were armed and did not say in his CCRB interview if PO Canady said anything about any of the other individuals. PO Canady exited the vehicle. Det. Smith did not exit the vehicle because in case someone ran, he was the operator of the vehicle and would give chase. § 87(2)(b) fled and Det. Smith followed him in the vehicle. Det. Smith did not see § 87(2)(b) throw any objects, though he was also focused on driving safely during the pursuit. § 87(2)(b) was apprehended shortly thereafter and no weapon was found on him. A canvass of his flight route did not produce any weapons.

Sgt. Cuevas' testimony differed in that he said PO Canady said she observed a group of people drinking and smoking on the sidewalk next to them (**Board Review 16**). PO Canady did not say anything about having observed an L-shaped bulge on anyone while in the car (though she did inform Sgt. Cuevas of this observation at the conclusion of the stop and at that time, she said she observed L-shaped bulges on two individuals). From about 15-20 feet away, while seated in the front passenger seat of the vehicle and looking toward the sidewalk on the driver's side of the car, Sgt. Cuevas observed a group of people standing on the sidewalk and smelled marijuana but he did not see anyone doing anything except standing. PO Canady exited the vehicle and spoke to § 87(2)(b). Sgt. Cuevas did not hear what was said between PO Canady and § 87(2)(b) and he did not see her frisk him. Sgt. Cuevas said there was no reason he remained in his vehicle after PO Canady approached. Sgt. Cuevas observed the encounter and did not see anything that made him suspect any of the individuals were armed. Sgt. Cuevas did not see anyone adjusting their waistband and did not recall if any of the other officers in the car said anything about anyone adjusting their waistband.

Sgt. Cuevas said § 87(2)(b) walked in front of the police vehicle and started to run away. Sgt. Cuevas did not suspect § 87(2)(b) of any offense at the point when he ran. Sgt. Cuevas exited his car and pursued § 87(2)(b) on foot because § 87(2)(b) had fled from a corner where people had been smoking marijuana and because he ran from a police officer. While pursuing him, Sgt. Cuevas observed that § 87(2)(b) held one of his hands close to his side at his waistband which made Sgt. Cuevas believe § 87(2)(b) was securing a firearm at his side or in his jacket. A canvass was conducted of § 87(2)(b) flight route which did not reveal any firearms. When presented with the Stop Report during his CCRB interview, Sgt. Cuevas did not remember how it was determined that the L-shaped bulge on § 87(2)(b) was a cell phone.

PO Doyle (**Board Review 18**) and PO Ardolino (**Board Review 19**) testified that they were on patrol in a different vehicle at a different location than Sgt. Cuevas, Det. Smith, and PO Canady. They received a radio transmission from the other vehicle requesting assistance. They did not receive any information about what was happening. They responded to the area where § 87(2)(b) had been apprehended shortly thereafter.

An officer may forcibly stop an individual when he possesses reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor. People v. DeBour, 40 N.Y. 2d 210 (1976) (**Board Review 20**). An officer will lack reasonable suspicion to stop an individual where the individual's actions are merely looking over their shoulder and placing a hand in their waistband, as these actions are susceptible of innocuous interpretations. People v. Moore, 176 A.D.2d 297 (1991) (**Board Review 36**). Police pursuit of an individual significantly impedes the person's freedom of movement and thus must be justified by reasonable suspicion that a crime has been, is being, or is about to be committed. Flight, combined with other specific circumstances indicating that the suspect may be engaged in criminal activity, could provide the predicate necessary to justify pursuit. Flight alone, however, or even in conjunction with equivocal circumstances that might justify a police request for information is insufficient to justify pursuit because an individual has a right to be let alone and refuse to respond to police inquiry. People v. Holmes, 81 N.Y. 2d 1056 (1993) (**Board Review 33**).

§ 87(2)(b) said he could not provide § 87(2)(b) full name or contact information, and that he did not see what happened to him. PO Canady's BWC video confirms § 87(2)(b) was not arrested or summonsed, and no Stop Report was prepared for him. PO Canady said she saw § 87(2)(b) adjusting his waistband, which made her believe he had a gun, and that Det. Smith and Sgt. Cuevas verbally indicated to her that they saw this as well. Sgt. Cuevas' and Det. Smith's statements contradicted PO Canady's statement in that they both denied seeing anything that made them believe § 87(2)(b) was armed. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

However, this portion of the BWC video does not contain audio and therefore, the investigation could not determine whether § 87(2)(b) provided consent to be searched or whether PO Canady asked him for consent or made any other statements prompting him to provide consent. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Canady and Det. Smith both described that PO Canady verbally alerted Det. Smith and Sgt. Cuevas to her observation that § 87(2)(b) had an L-shaped bulge in his pocket while they were still inside the police vehicle, and that this is what led them to believe § 87(2)(b) possessed a gun. However, Sgt. Cuevas' statement contradicted this in that he said PO Canady only alerted him to her observation of an L-shaped bulge at the conclusion of the encounter. He said he did not see

anything that made him believe § 87(2)(b) was armed upon PO Canady's initial approach. The progression of the incident further calls the initial suspicion of a gun observation into account. PO Canady and Det. Smith both said they observed an L-shaped bulge in § 87(2)(b) pant pocket which they believed to be a gun. However, despite this observation, PO Canady approached the supposed armed individual by herself while both Det. Smith and Sgt. Cuevas remained inside the police vehicle. PO Canady had time to frisk § 87(2)(b) unassisted before § 87(2)(b) ran off and Sgt. Cuevas exited the vehicle in pursuit of him.

Sgt. Cuevas said he pursued § 87(2)(b) because he was running from a corner where people had allegedly been smoking marijuana and because he ran from a police officer. He acknowledged that at the initiation of the foot pursuit, he did not suspect § 87(2)(b) of being involved in any crime. Though he said he smelled marijuana, he did not see § 87(2)(b) or anyone else smoking marijuana, and neither PO Canady nor Det. Smith said § 87(2)(b) was smoking marijuana. Sgt. Cuevas only developed a suspicion that § 87(2)(b) may have been armed after the foot pursuit began. § 87(2)(g)

Despite Sgt. Cuevas' testimony that he did not initially observe anything which led him to believe § 87(2)(b) was armed, crediting that there was a bulge in § 87(2)(b) pocket, according to the Stop Report, the bulge was determined to be a cell phone, though none of the officers remembered how this conclusion was ultimately drawn. However, § 87(2)(b) cell phone is captured in the BWC videos; it is in his hand as Det. Smith apprehends him and is later seen on PO Canady's BWC to be rectangular, not L-shaped (screen capture attached to **Board Review 38**).

The contradictory testimony from Sgt. Cuevas calls into question the initial observation reported by PO Canady and Det. Smith about their observations and what was discussed within the police vehicle before the stop initiated. Coupled with the absence of any specific observation that § 87(2)(b) threw anything during his flight from any of the three officers involved in his pursuit, the failure to produce any L-shape objects during their investigation, and the documented conclusion on the Stop Report that the bulge on § 87(2)(b) was determined to be a cell phone, § 87(2)(g)

Allegation (F) Abuse of Authority: At Howard Avenue and Sterling Place in Brooklyn, Police Officer Nicki Canady failed to provide an individual with a business card.

As noted above, at the start of PO Canady's BWC video, she stops and frisks § 87(2)(b) (**Board Review 01**). At the 00:15 minute mark of the media player timestamp (visible at the bottom of the screen), PO Canady starts running up the intersection and begins a foot pursuit of § 87(2)(b). She does not provide § 87(2)(b) with a business card.

Det. Canady testified that she did not provide a business card to § 87(2)(b) because she did not have the opportunity to do so given that she immediately began pursuing § 87(2)(b) who she believed was carrying a gun.

Officers must provide a business card at the conclusion of an encounter to an individual who is the subject of a law enforcement activity, including subjects involved in pedestrian stops where the officer has individualized, reasonable suspicion that the person has committed, is committing, or is about to commit a crime. An officer is not required to comply with this provision where exigent

circumstances require immediate action by the officer. NYC Administrative Code, Section 14-174 (Board Review 34).

§ 87(2)(g)

Allegation (G) Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith struck § 87(2)(b) with a vehicle.

Allegation (H) Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith pointed his gun at § 87(2)(b)

Allegation (I) Abuse of Authority: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith threatened § 87(2)(b) with the use of force.

Allegation (J) Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith used physical force against § 87(2)(b)

Allegation (K) Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith used physical force against § 87(2)(b)

Allegation (L) Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith restricted § 87(2)(b)'s breathing.

Allegation (M) Force: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith used physical force against § 87(2)(b)

§ 87(2)(b) testified that he ran away and an unmarked vehicle followed him. At one point, § 87(2)(b) tried to run across the street and his left knee was struck by the front of the vehicle. § 87(2)(b) fell back onto the sidewalk onto his right knee and stood up. Det. Smith, identified via investigation, exited the vehicle, pointed his gun at § 87(2)(b) and said, "I'll shoot you if you run again." § 87(2)(b) put his arms up. Det. Smith holstered his gun, ran toward § 87(2)(b) and grabbed each of his wrists. Det. Smith used his leg to sweep § 87(2)(b) feet from under him, causing § 87(2)(b) to fall to the ground. Det. Smith placed his knee on § 87(2)(b) back which restricted § 87(2)(b) breathing. Det. Smith put a hand on the back of § 87(2)(b)'s head and pushed § 87(2)(b) head into the ground.

§ 87(2)(b) sought medical treatment at § 87(2)(b) Hospital the next morning (Board Review 21, Board Review 22). He reported to medical personnel that he was approached by a group of several unknown men who hit him, pushed him to the ground, and held him down with a knee. § 87(2)(b) said he was hit in the right side of his face. The records did not include any description of having been struck by a vehicle. § 87(2)(b) complained of pain to his right knee, his left ankle, and his back. It was unclear to medical personnel whether § 87(2)(b) lost consciousness. § 87(2)(b) reported that he did not call the police but that his lawyer had been informed. A physical examination revealed tenderness of his right knee, left ankle, and back, and no other injury. X-ray scans were conducted which did not reveal any deformities. § 87(2)(b) was diagnosed with acute pain of the right knee, left ankle and back, and was prescribed ibuprofen for pain. Upon discharge, he was informed that the studies were negative, and he was advised to call to file a police report. At that time, § 87(2)(b) informed medical personnel that his assaulters were police officers.

Event documents revealed a 911 call from a male caller who reported that a man was struck by a police vehicle outside of 1710 Park Place. The 911 call originated at 11:09 p.m., approximately 21 minutes after the inception of the stop (according to the timestamps on the BWC paperwork received from NYPD Legal) (Board Review 23).

Contact attempts were placed to the phone number of the 911 caller but were unsuccessful (see IAs for contact attempts). § 87(2)(b)

At the start of Det. Smith's BWC video, which does not have audio at the start, Det. Smith has already exited his vehicle and is running toward § 87(2)(b) who is standing on the sidewalk (**Board Review 05**). Det. Smith reaches in front of him with both hands toward § 87(2)(b). Within two seconds, § 87(2)(b) is face-down on the sidewalk. Det. Smith's right hand is holding § 87(2)(b) left upper arm. With his left hand, Det. Smith reaches for § 87(2)(b) left hand. Det. Smith pulls § 87(2)(b) hands behind his back. At the 00:04 minute mark of the media player timestamp (visible at the bottom of the screen), § 87(2)(b) body is visible below the camera. Det. Smith is standing above § 87(2)(b) holding his hands behind his back; he is not making contact with § 87(2)(b) back. At 00:14, Det. Smith turns away. At 00:31, he walks back and picks up a hat from the sidewalk.

In PO Canady's BWC video (**Board Review 01**), beginning at the 01:00 minute mark of the media player timestamp (visible at the bottom of the screen), PO Canady catches up to § 87(2)(b) who is already on the ground. PO Canady places her hands on § 87(2)(b) back. Det. Smith's hands are seen on the left side of the video on § 87(2)(b) hands. PO Canady handcuffs § 87(2)(b). No officer presses § 87(2)(b) head into the sidewalk.

Det. Smith testified that he was the operator of the police vehicle and was by himself in the car when he pursued § 87(2)(b). When § 87(2)(b) ran onto Park Place, he ran from one side of the street to the other ahead of Det. Smith. Det. Smith denied that the police vehicle ever hit § 87(2)(b). Eventually, § 87(2)(b) came to a stop as he was running on the sidewalk, which prompted Det. Smith to exit his vehicle to apprehend him. § 87(2)(b) put his hands up and said, "I'm done." Det. Smith approached § 87(2)(b) and got a hold of both of his arms. Det. Smith denied drawing or pointing his gun at § 87(2)(b). Det. Smith denied threatening to shoot § 87(2)(b) or making any threat of force toward him. § 87(2)(b) lowered himself to his knees. Det. Smith held § 87(2)(b) arms and guided him to the ground to handcuff him for safety reasons, given that he believed § 87(2)(b) was armed. Det. Smith denied that he kicked or performed any leg sweep on § 87(2)(b). Det. Williams denied placing his knees atop § 87(2)(b) back and he denied pushing § 87(2)(b) head into the sidewalk.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (**Board Review 24**).

§ 87(2)(g)

While Det. Smith denied performing a leg sweep to take § 87(2)(b) to the ground, he acknowledged grabbing onto his arms and guiding him to the ground after § 87(2)(b) brought himself to his knees. Det. Smith did so in order to place § 87(2)(b) in handcuffs for his safety given that he believed § 87(2)(b) was armed based on the L-shaped bulge he observed and that PO Canady informed him of. § 87(2)(g)

§ 87(2)(g) § 87(2)(b) § 87(2)(g)

Det. Smith's BWC video shows that Det. Smith immediately engaged himself in controlling § 87(2)(b) hands with his hands once § 87(2)(b) was on the ground. The video shows that Det. Smith did not place himself atop § 87(2)(b) back and that he did not press § 87(2)(b) head into the sidewalk as alleged. § 87(2)(g)

Allegation (N) Force: Outside 1714 Park Place in Brooklyn, Police Officer Nicki Canady used physical force against § 87(2)(b)

Allegation (O) Force: Outside 1714 Park Place in Brooklyn, Police Officer Nicki Canady restricted § 87(2)(b) breathing.

Allegation (P) Force: Outside 1714 Park Place in Brooklyn, officers restricted § 87(2)(b) breathing.

As described above, § 87(2)(b) testified that Det. Smith placed his knees on § 87(2)(b) back which restricted his breathing. § 87(2)(b) alleged that other officers arrived and also placed their knees on his back which further restricted his breathing. § 87(2)(b) lost consciousness. When he regained consciousness, he was in handcuffs and seated in the rear of a police vehicle.

In Det. Smith's BWC video, § 87(2)(b) goes to the ground and Det. Smith begins to handcuff him, as described above (**Board Review 05**). At the 00:04 minute mark of the media player timestamp (visible at the bottom of the screen), PO Canady, dressed in a blue sweater, enters the video on the right and places her left knee atop § 87(2)(b) back. Det. Smith holds § 87(2)(b) wrists together until he stands up at 00:10 and PO Canady takes a hold of his wrists, which are not handcuffed yet (PO Canady's BWC video shows that she handcuffs § 87(2)(b) after she takes his hands). The video does not show whether PO Canady moves her knee after she takes a hold of § 87(2)(b). At 00:28, Det. Smith turns around and PO Canady is still positioned over § 87(2)(b) though the video does not clearly show where she is making contact with him and does not show whether he is handcuffed.

In PO Canady's BWC video (**Board Review 01**), at the 00:58 minute mark of the media player timestamp (visible at the bottom of the screen), PO Canady catches up to Det. Smith and § 87(2)(b) after § 87(2)(b) is on the sidewalk. She lowers herself toward § 87(2)(b) and places her hand on his upper back. At 01:11, PO Canady says, "I got it" and begins placing handcuffs on § 87(2)(b) which takes her about 20 seconds. The video does not show whether her knees are on his back after § 87(2)(b) is handcuffed. At 01:32, § 87(2)(b) says, "I can't speak" three times. The video does not show whether PO Canady makes any other physical contact with § 87(2)(b).

PO Doyle's BWC (**Board Review 03**) shows that he arrived after § 87(2)(b) had been taken to the ground. He is positioned on the left side of the screen holding § 87(2)(b) hands. PO Canady is captured on the left and PO Ardolino is on the right. During this aspect of the video, no officer has their knees or any other parts of their bodies upon § 87(2)(b) back.

PO Canady testified that she caught up to where Det. Smith and § 87(2)(b) were and that she gained physical control of § 87(2)(b) on the ground by placing her hand on his back so that he would not move. § 87(2)(b) did not physically resist. PO Canady did not remember placing her

knees upon his back and seeing the video did not refresh her recollection of having done so or how long she was in that position. § 87(2)(b) did not appear to have difficulty breathing during the incident. Det. Smith, PO Doyle, PO Ardolino, and Sgt. Cuevas did not see PO Canady or any other officer place their knees on § 87(2)(b) back and they denied doing so themselves. § 87(2)(b) did not appear to have difficulty breathing during the incident.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (**Board Review 24**). Officers shall apply no more than the reasonable force necessary to gain control. Officers shall avoid actions which may result in chest compression, such as sitting, kneeling, or standing on a subject's chest or back, thereby reducing the subject's ability to breathe. NYPD Patrol Guide, Procedure 221-02 (**Board Review 25**)

§ 87(2)(g)
§ 87(2)(b) PO Canady said she lost sight of § 87(2)(b) after he fled, and by the time she caught up to him, Det. Smith was by himself, holding § 87(2)(b) wrists, and attempting to place § 87(2)(b) in handcuffs. Given PO Canady's lack of knowledge regarding what may have transpired between when she lost sight of § 87(2)(b) and when she caught up to him again, and the safety interest in getting § 87(2)(b) handcuffed as quickly as possible, § 87(2)(g) assist her fellow officer in handcuffing § 87(2)(b) by placing her knee against his back to hold him in place until the handcuffs were secured. § 87(2)(g)

The medical records from § 87(2)(b) Hospital did not include any complaint from § 87(2)(b) about difficulty breathing or loss of consciousness during the incident, though they did include a complaint of back pain. The records revealed tenderness to § 87(2)(b) back but did not reflect any other injuries. Based on the video footage the investigation could not determine how long PO Canady remained atop § 87(2)(b) whether she repositioned her knee after § 87(2)(b) was handcuffed, and if her actions caused his breathing to become restricted. § 87(2)(g)

As described above, Det. Smith's BWC video shows that he did not place his knee atop § 87(2)(b) back. PO Doyle's BWC video shows that he and PO Ardolino were the only other officers to make physical contact with § 87(2)(b) while he was on the ground and this was when they arrived to assist PO Canady. The video shows that neither they nor any other officer aside from PO Canady ever placed their knees atop § 87(2)(b) back. § 87(2)(g)

Allegation (Q) Abuse of Authority: Outside 1714 Park Place in Brooklyn, Police Officer Nicki Canady frisked § 87(2)(b)

Allegation (R) Abuse of Authority: Outside 1714 Park Place in Brooklyn, Police Officer Joseph Ardolino frisked § 87(2)(b)

Allegation (S) Abuse of Authority: Outside 1714 Park Place in Brooklyn, Police Officer

Joseph Ardolino searched § 87(2)(b)

Allegation (T) Abuse of Authority: Outside 1714 Park Place in Brooklyn, Police Officer Nicki

Canady searched § 87(2)(b)

Allegation (U) Abuse of Authority: Outside 1714 Park Place in Brooklyn, Sergeant Gabriel

Cuevas frisked § 87(2)(b)

As described above, § 87(2)(b) said he lost consciousness shortly after he was subdued on the ground. Once he regained consciousness, he was already handcuffed and sitting in a police vehicle.

In PO Canady's BWC video, at the 01:42 minute mark of the media player timestamp (visible at the bottom of the screen), PO Canady asks § 87(2)(b) "Where did you throw it?" (**Board Review 01**). § 87(2)(b) response is not entirely decipherable. PO Canady asks him again where he threw it. § 87(2)(b) says, "It's on me." PO Canady says, "It's on you?" § 87(2)(b) says, "Yeah." PO Canady yells to other officers, "He says it's on him." At 01:50, PO Canady frisks § 87(2)(b) rear pant pockets and waistband. Other officers arrive. § 87(2)(b) is rolled onto his side. PO Canady frisks his front pant pockets. At 02:08, PO Ardolino's hand (wearing a blue glove) is captured frisking § 87(2)(b) left leg. PO Ardolino touches the outside of § 87(2)(b) jacket. At 02:15, PO Ardolino opens an interior pocket of the jacket and reaches inside. At 02:24, PO Canady removes § 87(2)(b) shoes. At 03:09, PO Canady frisks the bottom of § 87(2)(b) legs and the outside of his front pant pockets.

In Sgt. Cuevas' BWC video, at the 01:00 minute mark of the media player timestamp (visible at the bottom of the screen), Det. Smith and PO Canady make their initial apprehension of § 87(2)(b) after he fled. At 14:25 (approximately 12 minutes after the frisks and searches described in the last paragraph), Sgt. Cuevas returns to where PO Doyle is sitting with § 87(2)(b) after having canvassed the area for the alleged gun (**Board Review 02**). PO Doyle and Sgt. Cuevas lift § 87(2)(b) to a standing position. At 14:39, Sgt. Cuevas instructs PO Ardolino (referred to as "Joe" in the video) to "toss" § 87(2)(b) [Given Sgt. Cuevas' order and supervisory role, this allegation has been pled to him]. PO Ardolino appears to frisk § 87(2)(b) but the video does not show the specific areas that he touches. At 16:48, Sgt. Cuevas instructs the officers to turn off their cameras § 87(2)(g), § 87(4-b)

PO Canady testified that she frisked § 87(2)(b) pant pockets, waist, and groin area and did not feel anything she thought was a gun. She removed § 87(2)(b) shoes because sometimes people hide guns in their shoes. Given § 87(2)(b) statement that "It's on me," PO Canady believed the gun may have been concealed in his shoes.

PO Ardolino said he arrived in response to the request for assistance from the officers who originated the stop. Upon arriving, he believed the officers already on scene were placing § 87(2)(b) under arrest solely because he was handcuffed. Believing § 87(2)(b) was being arrested, PO Ardolino frisked the exterior of § 87(2)(b) clothing, including his jacket, and did not feel anything he suspected was a weapon. PO Ardolino reached inside § 87(2)(b) jacket pocket to ensure he did not have a weapon because he believed § 87(2)(b) was being placed under arrest.

Sgt. Cuevas testified that his instruction to PO Ardolino to "toss" § 87(2)(b) was an instruction to frisk him. Sgt. Cuevas was aware that § 87(2)(b) had already been frisked after he was apprehended, but he wanted to double check that he did not have any weapons on him. Sgt. Cuevas did not develop any reason to believe § 87(2)(b) may have still been armed other than those which originated the stop, and later he heard PO Canady say § 87(2)(b) said "it" was on him. Sgt. Cuevas did not learn about PO Canady's observation that she saw an L-shaped bulge on § 87(2)(b)

§ 87(2)(b) until the end of the encounter. § 87(2)(b) was still under investigation for the suspected gun because officers were still canvassing the area.

§ 87(2)(g)

PO Canady searched § 87(2)(b) by removing his shoes because when she asked § 87(2)(b) “Where is it?” he said, “It’s on me,” which she believed was a verbal acknowledgement that he was armed. § 87(2)(g)

PO Canady did not specify to § 87(2)(b) which “it” she was referring to, and § 87(2)(b) response was not specific in describing that he had a weapon on him, as opposed to any other item, such as the marijuana he informed the CCRB about or anything else. PO Ardolino said he frisked and searched § 87(2)(b) believing he was under arrest, though the only reason he believed this was because he was handcuffed. Sgt. Cuevas instructed PO Ardolino to frisk § 87(2)(b) because, despite having already been frisked and searched, Sgt. Cuevas wanted to double check that he was not armed. § 87(2)(g)

Allegation (V) Abuse of Authority: Outside 1714 Park Place in Brooklyn, Police Officer Nicki Canady did not obtain medical treatment for § 87(2)(b)

Allegation (W) Abuse of Authority: Outside 1714 Park Place in Brooklyn, Sergeant Gabriel Cuevas did not obtain medical treatment for § 87(2)(b)

Allegation (X) Abuse of Authority: Outside 1714 Park Place in Brooklyn, Detective Reginald Smith did not obtain medical treatment for § 87(2)(b)

Allegation (Y) Abuse of Authority: Outside 1714 Park Place in Brooklyn, Police Officer Brian Doyle did not obtain medical treatment for § 87(2)(b)

As described above, § 87(2)(b) testified that he lost consciousness during the encounter as a result of officers placing their knees on his back. Upon regaining consciousness, he said he was in the back of a police vehicle. Sgt. Cuevas spoke with § 87(2)(b) about the whereabouts of the gun, which § 87(2)(b) denied he knew anything about. A fire truck and ambulance arrived. A firefighter and an EMT approached the police vehicle and § 87(2)(b) asked them for water and told them he was in pain due to the handcuffs. The firefighter and EMT told § 87(2)(b) they could not help him and walked away without offering any assistance or administering any treatment. § 87(2)(b) did not ask any officer for medical attention.

The Event documents revealed a 911 call from a civilian who reported that § 87(2)(b) had been struck by a police vehicle and appeared to have a broken leg (**Board Review 23**). The Event documents did not reveal any request for medical treatment initiated by police officers.

In PO Doyle’s BWC video, starting at the 02:05 minute mark of the media player timestamp (visible at the bottom of the screen) PO Doyle lifts § 87(2)(b) into a seated position (**Board Review 03**). At 02:55, § 87(2)(b) torso slumps to the left as PO Doyle is holding him. At 03:10, PO Canady walks away and leaves PO Doyle holding § 87(2)(b) on the ground. § 87(2)(b) remains motionless and silent while sitting with PO Doyle. At 06:50, an unidentified man is seen standing across the street from PO Doyle recording the encounter. The man says, “Why is he like that? Why you ain’t calling an ambulance for him?” PO Doyle says, “He’s breathing. Check his stomach.” The man says, “You see him knocked out, call a fucking ambulance. Why you got him sitting here unconscious like that?” At 13:40, Sgt. Cuevas directs PO Doyle to pick up § 87(2)(b)

§ 87(2)(b). PO Doyle says, “Let’s go. Come on. Let’s go. Stop playing games, let’s go. Stop going limp. You’re breathing.” § 87(2)(b) does not respond. At 16:48, Sgt. Cuevas instructs the officers next to him to turn off their cameras § 87(2)(g), § 87(4-b) [At 07:55, 12:30, and 13:00, an unidentified officer is captured speaking discourteously to the unidentified individual standing across the street who was not involved in this incident. An IAB spin-off § 87(2)(b) was generated to address these statements.]

PO Canady, Sgt. Cuevas, Det. Smith, and PO Doyle all consistently said they did not believe § 87(2)(b) required medical attention during this incident, and consequently none of them requested medical attention for him. PO Canady described that § 87(2)(b) shut his eyes after he was apprehended, but he was responsive to officers in that he was speaking (such as when he said, “It’s on me”). Det. Smith testified that § 87(2)(b) appeared to be pretending to have fainted immediately after his apprehension. Det. Smith believed he was pretending because he had just fled from the officers, verbally signaled his surrender, and then immediately pretended to ignore the officers. Det. Smith noted that at the end of the encounter, § 87(2)(b) stood up and walked away as if nothing had happened, which further contributed to his belief that he was never in medical distress. Sgt. Cuevas cited reasons similar to Det. Smith’s for believing that § 87(2)(b) was medically stable, including his flight and sudden ignorance of the presence of officers. Sgt. Cuevas noted that § 87(2)(b) walked away and was giggling at the end of the encounter which further confirmed his belief that he was pretending to have been in distress. PO Doyle did not believe § 87(2)(b) had lost consciousness because as he stayed beside him, he observed that § 87(2)(b) was breathing and opening his eyes.

Officers must ensure civilians receive immediate medical attention if a subject demonstrates any potentially life-threatening symptoms or injuries. NYPD Patrol Guide, Procedure 221-02 (**Board Review 25**). Officers pledge to value human life, respect the dignity of each individual, and render services with courtesy and civility. NYPD Patrol Guide, Procedure 200-02 (**Board Review 26**).

PO Canady, Sgt. Cuevas, Det. Smith, and PO Doyle were consistent in describing that they did not perceive that § 87(2)(b) required medical attention because he was breathing and appeared to be physically responding to their actions. Sgt. Cuevas, PO Canady, and Det. Smith all described that they believed § 87(2)(b) was pretending to be unresponsive. § 87(2)(g) the BWC video which shows that § 87(2)(b) became verbally unresponsive, did not move his body, and was physically lifted and carried by other officers. § 87(2)(g)

While the officers may have believed he was pretending to have lost consciousness, failing to request medical attention § 87(2)(g) created the potential for a life-threatening condition if their assessment was incorrect. Further, § 87(2)(b) appearance prompted a civilian bystander to call 911 (as indicated in the event documents) to request an ambulance for § 87(2)(b) and prompted remarks of alarm from bystanders, as captured in PO Doyle’s BWC video. § 87(2)(g)

Allegation (Z) Abuse of Authority: Outside 1714 Park Place in Brooklyn, Sergeant Gabriel Cuevas failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) testified that he was released from the police vehicle and was not arrested or issued a summons. Various officers told § 87(2)(b) their names on scene, though he did not recall them

at the time of his CCRB interview. § 87(2)(b) was not offered and did not receive a business card from any officers.

The Stop Report prepared by PO Canady notes that § 87(2)(b) was offered a business card which he refused.

The BWC videos ended before the conclusion of the encounter § 87(2)(g), § 87(4-b) The available video does not capture whether a business card was ever offered to § 87(2)(b)

Of the officers who initiated the encounter with § 87(2)(b) PO Canady and Det. Smith testified they did not provide § 87(2)(b) with a business card. They were consistent in describing that they did not do so because upon returning from their canvass of the area, they observed Sgt. Cuevas speaking with § 87(2)(b) and Sgt. Cuevas offering § 87(2)(b) a business card. Sgt. Cuevas testified that he offered § 87(2)(b) a business card at the end of the encounter and that § 87(2)(b) said, “Nah, I’m good,” and did not take the business card.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g), § 87(4-b)
[REDACTED]

[REDACTED]

§ 87(2)(g), § 87(4-b)
[REDACTED]

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 30**).
- PO Canady has been a member-of-service for six years and has been a subject in 13 CCRB complaints and 42 allegations, one of which was substantiated.
 - § 87(2)(g)
- Det. Smith has been a member-of-service for 10 years and this is the first CCRB complaint in which he is a subject.
- Sgt. Cuevas has been a member-of-service for 14 years and has been a subject in 18 CCRB complaints and 63 allegations, 10 of which were substantiated. § 87(2)(g)
 - In CCRB case #201610447, the Board substantiated stop, frisk, and refusal to provide name/shield allegations against Sgt. Cuevas. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
 - In CCRB case #201804454, the Board substantiated frisk and search allegations against Sgt. Cuevas. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
 - In CCRB case #201909824, the Board substantiated two frisk and two search of person allegations against Sgt. Cuevas. The Board recommended Command Discipline B, which the NYPD imposed.
- PO Doyle has been a member-of-service for eight years and has been a subject in five CCRB complaints and 12 allegations, none of which were substantiated. § 87(2)(g)
- PO Ardolino has been a member-of-service for six years and has been a subject in two CCRB complaints and 11 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of January 22, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (**Board Review 31**).
- § 87(2)(b)

Squad: 13

Investigator: Rolando Vasquez
Signature

SI Rolando Vasquez
Print Title & Name

3/10/2022
Date

Squad Leader: Laura Kastner IM Laura Kastner 03/10/2022
Signature Print Title & Name Date